

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 6, 2003 at 8:00
A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 152, 2/22/2003; HB 158,
2/22/2003; HB 206, 2/24/2003
Executive Action:

HEARING ON HB 152

Sponsor: REP. STAN FISHER, HD 75, Bigfork

Proponents: None

Informational Witnesses: Jane Hamman, Office of Budget and
Program Planning
Ann Bauchman, Department of Natural
Resources

Opponents: None

Opening Statement by Sponsor:

REP. STAN FISHER, HD 75, Bigfork, stated HB 152 serves two purposes. The first is to clarify that the reimbursement of mutual aid money for fire purposes can be utilized by the **Department of Natural Resources and Conservation**. In 2002, there were large fires in Arizona, Oregon and other states. Montana provided mutual aid to these states by sending firefighters, trucks, planes and other equipment. The **DNRC** paid up-front costs of \$3.3 million for this assistance. The amendments will assure that **DNRC** can spend the money the state gets when it is reimbursed. The second portion of the bill is to increase the statutory appropriation for emergencies or disasters from \$12 million to \$25 million for the biennium. By February of 2002, \$7.7 million of the \$12 million available under current law had been spent for fire suppression and state emergency operations as a result of the September 11th disaster. At the first of the year there was only \$4.3 million remaining for the six months of the biennium. Any major fire or other disaster could have wiped out this balance in short order. In that case a special session to increase or restore the emergency and disaster appropriation fund would have been a real possibility. The increase in the bill is designed to prevent the state from running out of emergency funds in the next biennium. He advised the Governor's emergency fund can only be spent after a declaration of emergency has been issued.

Proponents' Testimony: None.

Informational Witnesses:

Jane Hamman, Office of Budget and Program Planning, said the bill was at the request of her department. They were very concerned about not having enough authority if there was some kind of disaster. She advised there is an effort to coordinate the bill with one of the rainy day consolidation bills that is coming out

of **House Appropriations**. Even if that were to occur, the bill would still be needed to provide spending authority. The amendments will say that in certain emergencies these funds will be drawn from a rainy day fund rather than from the general fund ending balance first.

Ann Bauchman, Department of Natural Resources, advised the bill addresses another issue that **Greg Petesch, Legislative Services Division**, had a problem with. Typically, reimbursements from federal entities for fire suppression activities have been deposited into the general fund. He felt that once federal dollars come into the state they should maintain their federal identity and be deposited into a federal account.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. ROYAL JOHNSON asked about the fiscal note allowing the **Department of Military Affairs** to authorize statutory authority. He said he didn't find that in the bill.

Ms. Hamman advised he had a good eye. She said that is an error in the fiscal note. She noticed it after it had gone to print and contacted the **Department of Military Affairs**.

SEN. JOHNSON asked how that would be cleared up.

Ms. Hamman said they would be happy to do a new fiscal note striking that line.

SEN. COREY STAPLETON advised drought is considered to be eligible in another bill and he asked if drought could be funded.

Ms. Hamman stated the statutory definition is when there is an emergency of such a magnitude the **Governor** has to declare a disaster, then the funds in this section of law become available. To her knowledge, that has never occurred except maybe once. It would be a rare occurrence. She had not seen the related bill but said she would be happy to look at it.

SEN. EMILY STONINGTON asked how much of the \$12 million has been expended in the current biennium.

Ms. Hamman advised there is about \$4.2 million left.

SEN. STONINGTON asked if the authority were to be expanded to \$25 million, does it come out of the ending fund balance.

Ms. Hamman stated; it does not reduce the balance of the fund as the legislature is considering the balance. After the legislature leaves, expenditures are made from that balance.

Taryn Purdy, Legislative Fiscal Division, commented that if the department has \$25 million in authority to spend as opposed to \$12 million, the legislature probably wants to take that into consideration when determining an appropriate ending fund balance. Because the legislature does not budget for that, anything they spend out of it comes out of the ending fund balance.

SEN. STONINGTON asked about the result of keeping it at \$12 million if they were to reach that in the middle of a fire season.

Ms. Purdy advised the most likely result is the legislature would have to come in and provide additional spending authority for them to pay the costs of those fires if they could not make it all the way to a legislative session. One way or another, the bills have to be paid. The question is do they have spending authority if an emergency is declared during that time or do they have to wait until the legislature provides additional authority.

SEN. STONINGTON asked if there is a big lag in terms of when the federal government pays in a fire season. Conceivably, the legislature would be back in session by the time the bills really were due.

Ms. Bauchman informed her that is correct. In cases where the department works on federal fires, the federal reimbursement typically does not come back to the state until around April. The state's reimbursement to the federal government which is usually much higher, can be deferred until after the session if it's the second year of the biennium. The last couple of years, the first year of the biennium took most of the resources for the first and the second year of the biennium. At the beginning of this year, **DNRC** had very little general fund to pay for July fire costs.

SEN. STONINGTON asked if there is \$4.2 million left in the fund.

Ms. Bauchman advised in working with the Governor's office at the beginning of the fiscal year, they elected to shift funding from every division within the department rather than utilize the Governor's emergency fund in case something else happened.

SEN. STONINGTON asked if they could not do that again.

Ms. Bauchman said they certainly could do that, but this year they were on the edge and had used their resources.

SEN. LINDA NELSON asked if they usually come in for a fire supplemental.

Ms. Bauchman said that was correct; fires are not appropriated.

SEN. NELSON asked if the \$25 million would give more leeway to get a little more money up-front from the Governor's emergency fund.

Ms. Bauchman advised that is correct.

SEN. NELSON asked if the money in the Governor's emergency fund is for other things besides fires. Some emergency monies after the last session went to eastern Montana because of the severe winter, not because of drought. The money covers a broad range of emergencies.

Ms. Bauchman affirmed that is correct. The train derailment is one example and hail storms are another.

SEN. JOHNSON asked if the cash shortage in FY 2003 has anything to do with the situation. Without cash, even an appropriation does no good.

Ms. Bauchman advised the issue wasn't cash in this fiscal year, it has been appropriation.

SEN. JOHNSON asked if it is correct they still have \$4 million in appropriation left for the balance of this year.

Ms. Bauchman said that is correct.

SEN. JOHNSON asked if they received all the money from the federal government that they were supposed to keep from the last fire season.

Ms. Bauchman advised this is the first year that the federal forest service sent money early. They sent money last December for some of the fire costs in Oregon. Usually, they don't pay until the end of the year. There have been two installment payments and an additional payment is due shortly.

SEN. JOHNSON asked how much is that.

Ms. Bauchman stated about \$1 million.

SEN. JOHNSON said they'd then have about \$5 million in cash and spending authority under the current law.

Ms. Bauchman said that is correct.

Ms. Purdy advised there does have to be an emergency declaration first. If there is not, **DNRC** cannot access this emergency money. There are two issues: declared emergencies and those fires that they still fund with a supplemental.

CHAIRMAN TOM ZOOK asked **Director Bud Clinch, DNRC**, how many fires in the past season were under emergency declaration.

Mr. Clinch advised very few of the fires that occur actually reach the magnitude of being declared an emergency. Last year, only two or three of the most major fires were declared an emergency and would qualify to extract money out of the Governor's contingency account. The majority of fires are in the 10 or 20 to 100 acre range don't ever reach that magnitude. The department incurs those expenses on an ongoing basis. Sometimes when those fires reach the magnitude where an emergency is declared, they are able to get a federal FEMA declaration which brings some federal monies up-front. He advised viewing the proposal not from an unusual or extraordinary situation but from the routine. They are finding because of the increased costs and magnitude of fires, they don't have the cash flow within the department for the biennium especially if there is an excessive fire year the first year of the biennium.

SEN. RICK LAIBLE asked the reason for the language change in Section 1. He wondered how mutual aid is reimbursed currently.

Ms. Hamman advised that refers to the point **Ms. Bauchman** made about the question **Greg Petesch** raised during the interim. The language in HB 2 is those funds will be deposited into the general fund. Federal funds should not lose their identity and **DNRC** could spend the funds as they are received for mutual aid.

SEN. STAPLETON asked how long \$12 million has been the law.

Ms. Hamman advised **CHAIRMAN ZOOK** probably remembered as he carried the last bill to raise it to that amount.

SEN. STAPLETON asked what the amount was before that.

CHAIRMAN ZOOK answered ten million.

SEN. STAPLETON said that was a twenty percent increase and now they were asking for more than a hundred percent increase. He wondered why that much.

Ms. Hamman advised it was a decision that **Chuck Swysgood, Office of Budget and Program Planning**, reached after many meetings with various agencies, primarily **DNRC** and **Military Affairs**. After 9/11 and after the fires during the first year of this biennium, they were looking at opening and closing the emergency operations center on a day by day basis. They looked at the accounting and efficiencies of transferring funds, as **Ms. Bauchman** indicated. They moved money out of the reserve water rights compact commission to be able to fight fires and now they have to transfer it all back. It is time-consuming and costly and the decision was made to come back six years from now and not be doing it every single session.

SEN. JOHN ESP asked because they had to transfer funds, was there any incentive to try to control costs.

Ms. Hamman answered you don't want to have daily meetings with **Mr. Swysgood** if you're not controlling costs because they are not pleasant experiences in terms of the grilling you would get about expenditures whether it was fires or emergency operations. They did everything they could to control every cost and were worried for months about asking for a special session. The reason they had \$4 million left is because **Mr. Swysgood** insisted they have enough money to get to this session.

Closing by Sponsor:

REP. FISHER closed on the bill.

HEARING ON HB 158

Sponsor: **REP. DICK HAINES, HD 63, Missoula**

Proponents: **Hank Hudson, Department of Health and Human Services**

Opponents: **None**

Opening Statement by Sponsor:

REP. DICK HAINES, HD 63, Missoula, advised the bill comes about because in 1996, the welfare reform law permitted tribes to operate their own TANF programs in direct relationship with the federal government. When they do, the state must pay \$100,000

each year to help them set up the program. After the first biennium, they no longer receive that money. The bill tries to control where it comes from and the impacts. In the past the money came from the general fund and that impacts other programs. The bill allows them to appropriate the money in HB 2. Two tribes currently have TANF plans in place, Fort Belknap and the Salish-Kootenai, and since they are already operating their TANF plans, they will not receive any money. It is not known if another tribe will come in and the money needs to be ready. If the money is not used, it will revert back to the general fund.

Proponents' Testimony:

Hank Hudson, Department of Health and Human Services, advised the bill is carried at the request of the department. The welfare reform law of 1997, was a massive change. One of the changes allows tribes to operate their own TANF program. TANF replaced AFDC. States are required to spend a certain amount of state money to get the block grant. If a tribe goes their own way as Fort Belknap and Salish-Kootenai have done, the department's block grant is reduced and the tribes get their proportionate share of the state's block grant. Two sessions ago, the legislature made the decision that if a tribe does go their own way and runs their own program, then they would receive that portion of state spending that's required along with the maintenance of effort plus \$100,000. This would serve as an incentive and also provide some start-up money. There was no appropriation last session for the \$100,000 and one tribe, Fort Belknap, went their own way. The bill protects the division in case a tribe goes their own way. They don't really know how many tribes might make this decision in the next biennium. There might not be any tribes or potentially five. The guess is one tribe is in a position to do this. One of the provisions of the bill requires a tribe that receives the maintenance of effort money and the \$100,000 to submit reports to the state so the state can track how the money is being used and potentially count it towards the state's maintenance of effort or at least to provide some oversight.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 1; Side: B}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if this is the continuation of a current program.

Mr. Hudson replied the bill will fund the continuation of the law that was passed two sessions ago. The program itself is the TANF program, which is a federal law authorized for five years and is currently up for re-authorization.

SEN. MCCARTHY asked if there is any leftover money from the last biennium in the fund.

Mr. Hudson advised there was never any funding provided in the past.

SEN. MCCARTHY asked if there is a contingency plan if they run out of money or if the tribes don't use the money.

Mr. Hudson advised if no one applies for it, the appropriation reverts to the general fund. It is restricted only for this purposed. If more than one tribe applied, they would be in a bind and would have to take it out of current appropriations or perhaps appeal to the budget office.

SEN. MCCARTHY said she knew the TANF program was already using federal funds, but wondered if there were any other matching federal funds that could be drawn on for this.

Mr. Hudson replied there are no matching funds in the TANF program; it is all maintenance of effort. Last biennium, they reduced funds in the child care program which was their most accessible and available general fund money.

SEN. JOHN COBB asked which tribe was thinking about going and if the department had received anything in writing.

Mr. Hudson advised the Chippewa-Cree, Rocky Boy Reservation government seems to be the closest. They haven't received anything in writing yet. There had been a lot of discussion.

SEN. COBB referred to page 2, line 7-20, and asked what that means historically in terms of caseloads.

Mr. Hudson advised the language refers to maintenance of effort. It says if for some reason the legislature were to not appropriate their maintenance of effort, then they wouldn't pass on the maintenance of effort. The maintenance of effort has never been in question because the legislature has always appropriated it.

SEN. COBB asked if it was \$14 million.

Mr. Hudson advised an appropriation of \$14 million maintenance of effort in HB 2.

SEN. JOE TROPILA asked why the fiscal note was revised and why the sponsor did not sign it.

REP. HAINES said he had not had time to sign it. He was not sure about the revision.

Mr. Hudson advised originally they wrote the fiscal note to indicate the maximum liability the state would have if all five tribes decided to go their own way this biennium. That is a very unlikely scenario. The budget office assured them that any bill with that fiscal note would not fare well and put a zero fiscal note on it because they said no tribe has submitted any formal indication that they're going their own way. When it went to hearing in **House Appropriations** with a zero fiscal note, one tribe came in and said they were planning on doing this in this biennium. At that point, the \$100,000 a year was put in.

SEN. TROPILA asked what would happen if all five tribes came in and if it would be \$500,000.

Mr. Hudson answered yes, but they didn't think that would happen. It is an awkward situation to set a budget now for what may or may not happen in the next two years.

SEN. STONINGTON asked **REP. HAINES** to answer that question.

REP. HAINES advised if all five tribes came in it would be \$200,000 per tribe for the full biennium.

SEN. STONINGTON asked if the federal TANF program requires offering the \$100,000 per year incentive.

Mr. Hudson advised the federal TANF law does not require offering the incentive nor does it require providing the state's maintenance of effort share to the tribes. They thought it seemed equitable that if the tribes take their share of the caseload, they would have their share of the funds. The \$100,000 was added as a way to provide an incentive. It is a Montana statutory requirement.

SEN. NELSON referred to page 2, lines 10 and 11, where it says "grant to each tribe or combination of tribes implementing a new tribal family assistance plan after April 28, 1999, \$100,000 of general fund money" and noted the fiscal note really doesn't match the bill. The fiscal note is using funny assumptions, it seemed to her.

Mr. Hudson said the assumption was there would be only one tribe in the next biennium, but that tribe would have its plan ready on the first day of the first year of the biennium. They would get \$100,000 the first year and \$100,000 the second.

SEN. NELSON asked why he would assume more tribes wouldn't look at this, get on board and get their act together.

Mr. Hudson said the federal law was passed in 1996 and in seven years, two tribes have made the move. Discussions with tribes are ongoing. The tribes are saying they don't feel they are ready to do this. They would have to create eligibility and policy manuals as well as offices. It is a decision a tribe can make that would reinforce their sovereignty and give them more control. Another factor is, as caseloads have risen, the amount of money a tribe gets will be eaten up by benefits just the way it is in the state. There is less incentive.

SEN. NELSON asked if the hoops to jump through are strict enough to get this money that it would really make the tribes think twice rather than coming forward and getting the money because its there.

Mr. Hudson thought it is quite an undertaking to develop a plan. It is strictly a federal/tribal relationship. By law, the tribes must send **DPHHS** a letter if they are going to do it. All the negotiations are with the federal government. If they do get an approved federal TANF plan and the state block grant gets smaller, there aren't any additional hoops to get the state money. All they have to do is get a federally approved TANF plan. There is retro-cession language in the federal law which means they could operate the plan and then decide it isn't working and return to the state. They have to give certain notice before they retro-cede.

SEN. ED BUTCHER said he was confused why the state is standing at attention waiting for the Indians to decide what they want to do. He wondered why it was being done in reverse. When they get their act together and decide what they want, then they should come to the state and the legislature appropriates the money. It seemed to him it would make more sense.

Mr. Hudson said his only concern with that is the legislature meets every two years; if this occurs in the interim, the department would not have the authority. The \$100,000 would not be there to get things kicked off.

SEN. BUTCHER said tribes would then wait until the legislature met again. By then they might really have it sorted out.

SEN. MIKE COONEY advised the fiscal note, on assumption #2, talks about the approved federal assistance plan. He asked if that is a tough process between the federal government and the tribes and that might be reason why other tribes won't just rush in unexpectedly.

Mr. Hudson advised it is fairly rigorous. The federal government will provide tribes some latitude they won't provide states. They will allow tribes to design plans that don't look exactly like what states are required to do. The biggest barrier for tribes is taking on all the administrative responsibilities of operating a human service program. Salish-Kootenai, which moved immediately when the law was passed, had the machinery in place. The other tribes don't have the computers and trained workers. Both the plans produced in Montana have just as stringent requirements as far as people needing to work and limits to how long they can receive benefits. They haven't been any more lenient than the state has.

SEN. COONEY asked if the two tribes did not receive the \$100,000 a year incentive.

Mr. Hudson said they did not give Salish-Kootenai the \$100,000 because they made their move before that law was in effect. Fort Belknap received \$100,000 each year. They are the only tribe that benefitted from the provision. After July 1, 2003, they will not receive any further incentive money.

SEN. COONEY asked if there is any way the Salish-Kootenai could come back if the bill passes and say now they want the \$100,000.

Mr. Hudson advised no because their plan is already in place. They would have to retro-cede and then do a new plan. They took advantage of a different provision in federal law that allowed them a greater amount of TANF money and then declined the state money.

SEN. JOHNSON thought it might be putting the cart before the horse. In six years, there had only been two plans. He wondered why not ask them to come with a plan beforehand and then appropriate money for it. He did not favor appropriating money for the biennium for something that might or might not happen. He asked about the federal share.

Mr. Hudson replied the total tribal on-reservation proportion of the TANF caseload is between 40 and 45%. In effect, between 40 and 45% of the total block grant, which is \$44 million, could conceivably be appropriated to tribes if they all pulled out of the state program at once. The amount of maintenance of effort

money that each tribe is entitled to is generally less than \$1 million each. If Rocky Boy develops their own plan, they will receive \$115,000 of state maintenance of effort per year, plus the \$100,000. The largest liability is with the Blackfeet and they would get \$587,000 per year of maintenance of effort money plus the \$100,000. He thought if the Blackfeet, Fort Peck, and the Northern Cheyenne all developed their own plans simultaneously, it would be about 35% of the entire block grant.

SEN. JOHNSON asked why not come from the other direction.

Mr. Hudson advised the statute itself was not a department proposal, but they didn't oppose it. Once the bill was on the books, they wanted to make sure an appropriation is available if a tribe did go their own way. It was not too big a deal in the past, but currently finding \$100,000 in **DPHHS** would be a painful activity. He did not want to leave the department liable for an unfunded responsibility in the next biennium. If no tribe uses the option, the money will just go back into the general fund.

SEN. STAPLETON asked if the department sends out the same information to agencies as they do to the tribes saying they need stat sheets or request lists and any letters of indication need be in before November by law because we're going smooth with the budget and if you're not in it, you're not getting the money.

Mr. Hudson advised they do that with all their partners to get an idea of what the expectations for the next biennium will be. They have provided tribes some money to engage in a planning process so they could have a better idea if this makes any sense to them or not. The department is not getting any real strong indication that anyone is interested in having their own tribal TANF system plan except for Rocky Boy, who have made several indications they are close to submitting a plan.

SEN. STAPLETON asked if that is the Chippewa tribe.

Mr. Hudson confirmed the Chippewa tribe is on that reservation.

SEN. STAPLETON asked if we forgot to tell them last summer.

Mr. Hudson advised they are sensitive about encouraging or discouraging tribes. This is a decision they need to make without any state influence. The department always tells them that provision is in law.

SEN. STAPLETON asked if he is opposed to putting language in the bill to better address that situation.

Mr. Hudson replied he is not opposed to anything to improve the bill in any way. He was concerned about not having the \$200,000, having a tribe go their own way, and having to carve that out. He advised the transfer is contingent upon the appropriation. In the hearing in the House, there was some concern the department was trying to get this bill in just to get out of paying the \$100,000. That is not their intent. They can't make the payment if they don't have the money. The tribes would feel betrayed to some extent if the money is taken out and the bill just passes.

SEN. BOB KEENAN said in subcommittee they approved \$100,000 conditional upon a PSA account going through. He asked where's the cart and where's the horse in relation to this bill. If this bill dies is the spending authority in HB 2 under the PSA.

Mr. Hudson advised if this bill were to die and the PSA account were to be approved, the department would have \$100,000. They wouldn't have the language of the bill that says the payments are contingent on the appropriation, but they would have the appropriation. If one tribe went their own way, the department would be covered for the next biennium.

SEN. MCCARTHY asked what happens if the bill dies and the money is removed from HB 2.

Mr. Hudson said in that case, they would have to find the \$100,000 from some other existing source.

SEN. MCCARTHY stated they wouldn't have the authority, because they didn't pass the bill.

Mr. Hudson said the statute is already in place. All the bill does is amend the language that says the transfer is contingent upon an appropriation. Now the language says the department will transfer \$100,000.

SEN. LAIBLE questioned the department was not trying to encourage or discourage tribes, but was offering them \$200,000 for the biennium. He called that an encouragement. He asked about the advantage to the state if they go their own way.

Mr. Hudson advised there would be several advantages to the state. One is that it has been the policy of this administration and previous administration to encourage the sovereignty of the tribes. This is one way tribes can influence their sovereignty. Secondly, it reduces the department's responsibilities.

SEN. LAIBLE asked if all the tribes went their own way, since they are 40 to 45% of the block grant, the department could reduce staff by 40%.

Mr. Hudson said they had those discussions; they would have a considerably smaller public assistance program if each tribe ran their own programs. When Fort Belknap developed their own program, the department closed their office in Chinook. They still have someone there on a part-time basis. They moved their headquarters from Blaine County to Fort Belknap and reduced the staff. They still have responsibility for food stamps and Medicaid eligibility with the tribes.

SEN. LAIBLE asked if a tribe was given \$200,000 and five years later they came back and said they can't handle the program, would the state have to bring them back within our program and if so would the state get the \$100,000 back.

Mr. Hudson said the law requires there be retro-cession provisions and the federal government approves those. The department would have to take them back. That is a big risk, not so much with the maintenance of effort and the \$100,000, but the population would have to be absorbed back in. The department has a big interest in their success.

SEN. KEITH BALES believed with the way the bill was written and introduced, the department had the option of paying or not paying the \$200,000 to the tribe. New Section 2 on the bottom of page 2 was amended in the House.

Mr. Hudson said that is correct.

SEN. BALES said if they took out what was amended in the House, it would be back to giving the department authority to either do it or not depending on if they had money.

Mr. Hudson said that is correct.

{Tape: 2; Side: A}

SEN. BALES asked how much general fund money goes along with the TANF money.

Mr. Hudson clarified they get \$44 million. They have to spend \$14 million of state money.

SEN. BALES asked if two tribes are doing their own and getting their share of the \$44 million and some general fund money is paid directly to the tribes to run their program.

Mr. Hudson advised the Salish-Kootenai tribe got no state money; they didn't get the \$100,000 or their share of maintenance because they went in under a provision that allows them to claim the state's portion of TANF money. They could choose to count either the number of tribal members as part of the calculation of how much block grant they get, or the total number of American Indians living on the reservation. They chose the total number of American Indians because there are a lot of non-tribal American Indians that live on the Salish-Kootenai Reservation. They only serve tribal members. They are not getting any state money. Fort Belknap gets their share of maintenance of effort plus \$100,000 a year each year of this biennium and then they won't get the \$100,000 any more, just their share of maintenance of effort.

SEN. BALES said he thought all the tribes would be ahead to follow the lead of the Salish-Kootenai and get a higher percentage of TANF. If its based upon the number of tribal members on the reservation, they probably have the least amount in comparison to some of the other tribes in the state.

Mr. Hudson advised their analysis is that no other tribe would probably take that option because no other tribe has such a large number of non-tribal American Indians living on their reservation. There are a large number of American Indians on the Salish-Kootenai Reservation of other recognized tribes. Most other reservations don't; the people who live there are tribal members. They would have nothing to gain from that provision. They probably would want the maintenance of effort.

SEN. BALES stated as each tribe goes, the state will be required to give that percentage to the tribe and they will handle it totally at that point. If three other tribes went, it would be large portion of the money.

Mr. Hudson said that is correct. They warned the staff if all the tribes went, the department would have to downsize dramatically.

SEN. BALES advise the Senate passed a resolution shortly before transmittal that it is the state's desire that all of the social programs go directly to the tribes rather than through the state. He asked if there is any thought of being able to implement such a program.

Mr. Hudson advised the TANF program is the only Human Service program that has a provision for doing that. The law says a tribe can take their share of money straight from the federal government and be free of the state's involvement. Most human

service programs do not allow that by federal law. It would take changes in federal law.

SEN. KEENAN asked if the tribes were to go directly to the federal government for grant money, would there be \$44 million available and no state obligation to put in the \$14 million.

Mr. Hudson advised no. The obligation is a statutory.

SEN. KEENAN asked if the federal government has no requirement. If tribes were to do their own TANF program, they would take the federal money. The state made an obligation to contribute 30%.

Mr. Hudson advised the obligation is to contribute the maintenance of effort and the \$100,000.

SEN. GREG BARKUS asked how much money would be saved if the department downsizes.

Mr. Hudson said they operate three big programs: food stamps, Medicaid eligibility and TANF. About 400 people do these three programs. They would still have to do Medicaid and food stamp eligibility. He thought maybe a quarter of their staff would be cut. They would have to find different ways of doing business. They had been doing that already this biennium. He estimated savings of about 25%.

SEN. BARKUS asked if there would be a significant dollar savings.

Mr. Hudson replied if every tribe went their own way, 45% of the TANF caseload would no longer be the department's responsibility.

SEN. BALES asked if there is any way the state can just give it to the tribes to run.

Mr. Hudson said it is a complex issue. When a tribe operates their own plan, they are no longer eligible for the state plan. A person receiving services in a tribal plan can't receive services from the state with the same funding source. He was not sure as a state they could give tribes their money and then say don't come and apply in Great Falls or Billings. He was not sure they could tell people they are no longer entitled to benefits state citizens are entitled to because they are still citizens of the state of Montana. His concern with the resolution passed in the Senate is with being real clear people who live on reservations are citizens of the state of Montana and retain the rights of citizens of the state. He was not sure they could divide the money and say they were no longer citizens of Montana.

SEN. BALES said the federal law on TANF requires tribes do one or the other. He asked if there is a mechanism whereby the state can say the tribes should be running their own program. Then the federal law will kick in. He asked if that was happening in any other state and if that could be done in the bill.

Mr. Hudson didn't believe there is a mechanism to really enforce that. In some states he thought there had been an effort like that and it didn't work out. It was unclear if the money would run out and if they still would be eligible to receive services off the reservation which they would. He didn't think they could divide up parts of the state and say here's your share and when it's gone, it's gone. The department is required to operate a state TANF program. He thought it is a legal issue and no other programs do that.

SEN. JON TESTER asked if the \$100,000 grant is classified as part of the maintenance of effort.

Mr. Hudson said it is not included in maintenance of effort. If a tribe operates a program, it is fundamentally the same as the state program; the state can attempt to count some of that. It is problematic and involves tribal reporting.

SEN. TESTER asked if the maintenance of effort money is a proportional dollar figure from the feds.

Mr. Hudson clarified it is not a matching amount. It is 75% of what the state was spending in 1994.

SEN. TESTER asked if the \$100,000 grant is for a two year period or four.

Mr. Hudson clarified it's for a two year period, but the plan has to be in place the entire year of each biennium. To get the \$200,000 in the next biennium, the plan would have to be in place July 1.

SEN. TESTER asked if after that two years, a tribe isn't eligible.

Mr. Hudson confirmed it is a two-year limit.

SEN. TESTER asked about the purpose of the \$100,000 if the plan is already established before they get the money. He wondered about the reasoning behind allocating the \$100,000.

Mr. Hudson said right now, they don't have the \$100,000 identified or appropriated. If a tribe did go their own way, the

law says the department would provide them \$100,000 each year. The department does not have an appropriation.

SEN. TESTER asked about the history; why was the statute implemented to begin with.

Mr. Hudson said the bill was two legislative sessions ago and the purpose was to provide an incentive and some infrastructure.

SEN. ESP asked how much of the \$44 million block grant and the \$14 million maintenance of effort is administration.

Mr. Hudson said they have a limit of 15% and the department is a little below that cap. The administration costs cover parts of the eligibility.

Closing by Sponsor:

REP. HAINES closed on the bill. He advised the committee to retain the fact they are trying to control the impact of the \$200,000 if they have to pay it.

HEARING ON HB 206

Sponsor: **REP. CINDY YOUNKIN, HD 28, Bozeman**

Proponents: **Brenda Nordlund, Department of Justice**
 Kelly Jenkins, Montana Public Employees Retirement
 Board
 Tom Butler, Montana Highway Patrol

Opponents: **None**

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, advised HB 206 is a bill necessary to resolve some funding problems with the retirement accounts for the **Montana Highway Patrol**. The fiscal note says "This bill through driver's license fee increases and changes in revenue distribution percentages corrects the funding shortfall for the **Montana Highway Patrol** retirement account. The balance in the MHP retirement fund has been decreasing since 1999 and will reach a negative balance in FY 2003." She advised the negative balance expected at the end of 2003 is about \$84,000. The bill increases driver's license fees from the current \$4 per year to \$6 per year. The annual license fee has not changed since 1991 when it increased from \$3 to \$4. The bill also increases the fee for a replacement driver's license from \$5 to \$10. The last time that changed was in 1985 when the fee was

increased from \$1 to \$5. The cost of the plastic alone for a driver's license is \$3.15. Currently, they are barely covering the cost of the plastic and are certainly not covering the administration cost. Primarily, the bill is for correcting the retirement accounts for the PERS system for the **Montana Highway Patrol** retirement account.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, had two handouts for the committee--a fact sheet, and the inflow and outflow for driver license fees that go into the state special revenue fund that is used to make a contribution or a portion of the contribution of the state of Montana for the Highway Patrol Retirement Pension System. **EXHIBIT(fcs47a01) EXHIBIT(fcs47a02)** The text of the fiscal note is incorrect and the shortfall begins in FY 04. The fiscal note shows they are balanced, barely, this year. The worksheet explains why the bill is needed. They are asking for a \$2 increase per year for a base driver license. A class D license gives the ability to drive passenger vehicles. Most driver licenses are renewed for an eight-year period. Instead of paying \$32, it would be \$48. A replacement license is \$5 which would increase to \$10. The funding adjustments are shown on page 4 of the bill. They had been very careful, in crafting this bill, to effect the fund that is at issue here, and primarily that fund. She referred the committee to the state special revenue fund sheet. This sheet shows the necessity for the bill. On page four of the bill, line 1, they are seeking an adjustment in the distribution of the portion of driver license fees and duplicate driver license fees that are deposited into the state special revenue fund. It is from this fund they pay their employer obligation to the **Highway Patrol** pension system. That obligation is established by state law. That state law, referred to on line 4, page 4, is 19-6-404. From the driver license fees, they contribute an amount equal to 10.18% of the total compensation paid to members of the **Montana Highway Patrol**. They estimate the fund will have a negative balance of \$83,000 in FY04 if these fees are not changed. If it continues, it will increase to \$391,000 by the end of the biennium. Part of the reason for the change is the migration from a four-year driver's license to an eight-year driver's license; the inflow has dropped. The period from 1996-1999 was the conversion period and there was above normal revenue. By FY 2000, every driver's license, when renewed, was renewed for an eight-year period creating a drop in revenue. There was a 20% increase in the outflow between 1999 and 2001 and it is continuing to rise. Without the bill, they can't meet their obligation. The department would bring a report to the **Legislative Finance Committee** on a biannual basis, to monitor the inflow and the outflow from the state special revenue

fund. The adjustment to the State Traffic Ed Fund was intended only to keep them revenue neutral. The adjustments on page 4, lines 8 and 9 are commensurate adjustments in order to deal with the **Highway Patrol** state special revenue fund and the state general fund. The general fund will also benefit as a result of the fee increase over the next biennium.

Kelly Jenkins, Montana Public Employees Retirement Board, rose in support of the bill. The bill allows the state to fulfill its commitment in current law. That current law says that 10.18% of payroll be paid to the **Highway Patrol** officers retirement system pension trust fund. It does not increase that percentage or increase the amount of money goes into that fund. It increases the money into a special revenue account from which the 10.18% established in current law, is paid into the pension trust fund.

Tom Butler, Montana Highway Patrol, testified he was appearing on his own time and not being compensated by the state. He serves as vice-president of the **Association of the Montana Highway Patrol**. The funding shortfall was an unintended consequence when driver's license renewals moved from four years to eight years two sessions ago. HB 206 is critical to insure funding provisions for the retirement system remain actuarially sound. It is not an increase in benefits, but merely allows the state to meet their obligations. He presented an informational brochure to the committee. **EXHIBIT(fcs47a03)**

{Tape: 2; Side: B}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCCARTHY said she didn't doubt the money is needed for the obligation, but wanted to know how to explain this to her district where most of the offices for drivers license renewal have been closed.

Mr. Roberts advised they have tried to maintain the driver's license services to the best of their ability. He didn't know how she would explain it. None of this money goes to driver licensing services. It either goes to the general fund or to **Highway Patrol** retirement. None of the money is going to present ongoing costs of driver license services.

SEN. BALES asked why the fee was not going up on commercial driver licenses.

REP. YOUNKIN advised they didn't need to. Doing it in the manner proposed sufficiently covers contributions.

SEN. BALES stated an interstate commercial driver's license is \$5 and intrastate is \$3.50 per year. He wondered if a person could have an intrastate commercial driver's license and be money ahead.

REP. YOUNKIN advised if he wanted to do what it takes to get a commercial driver's license, she supposed that would be fine. She referred the question to **Ms. Nordlund**.

Ms. Nordlund replied a commercial driver's license endorsement is an add-on to the base license. In addition to paying the proposed fee increase for a base driver, a commercial driver pays \$5 if they're interstate and \$3.50 per year if they are intrastate. They don't get a cheaper driver's license, it is more expensive. They will feel this base increase just like anyone else.

SEN. BALES asked if the reason for the budget crunch was moving renewals to the eight years rather than four years. He asked what years were the switching years.

Ms. Nordlund advised the effective date on the four to eight years was October 1, 1995. It took four years to migrate the total driver license population.

SEN. BALES asked if from 1996 to 2000 was when they were switching.

Ms. Nordlund said that would be correct.

SEN. BALES asked if there was a double amount of income during those years; now the revenue coming in should be stable. He imagined before 1996, it was probably half.

Ms. Nordlund replied he is correct.

SEN. DEBBIE SHEA asked about the exceptions in the first paragraph to the eight-year license term.

Ms. Nordlund clarified the exceptions were for those under the age of twenty-one being issued a first-time driver's license. Those licenses expire on their 21st birthday. They tried to tie the term of the license to something significant so they weren't coming back in unnecessarily. If you are between the ages of 15 and 21, your driver's license will either be six years or it

could be one year. For those 75 or older, there is a four-year cycle.

SEN. SHEA asked if the fee for that is assessed according to years.

Ms. Nordlund advised yes.

SEN. STAPLETON referred to the exponential growth of the fund balance. By 2007, it would be over \$2.5 million which is more than double. The driver's license fee is a 50% increase and duplicates are increased 100%. He didn't see any sunset or intention to not grow the fund balance. He asked the reason for the fee schedule.

Ms. Nordlund referred to page four, lines 4-6. Between now and the next session, the department will come to the legislature with a report to show where the fund is. They would report the amount deposited and the amount transferred out for the employer contribution. If the legislature sees fit to do an adjustment, it could do so in the next session. She claimed it gives the legislature a more proactive role. A component was not only the eight-year driver's license, but when the legislature changed the compensation for state employees across the board, or a special compensation change as occurred in 1999 for the **Highway Patrol**. The multiplier of 10/18% is affected immediately. From 1999-2001, there was a 15-20% increase because there was a change in their compensation rates.

SEN. STAPLETON said he understands the legislature always have the oversight. With a such an aggressive and exponential fee schedule, his concern is once they have that money there may be new purposes next time. Suddenly everyone forgets the argument that they never did need \$2.5 million. He asked since they've gone through the pain of developing such an elaborate fee schedule, why did they leave out an exit strategy.

Ms. Nordlund said they had bills with sunsets before. In this case, they didn't because they would end up treating individuals differently over the period of years of the license cycle.

SEN. STAPLETON stated the number of Highway Patrolmen is a predictable number. Expenditures aren't going up much more than would be expected. He asked if there is a number in the fund balance that all money from that point on could revert to the general fund.

Ms. Nordlund advised the legislature has the ability to do that.

SEN. STAPLETON asked what the number would be.

Ms. Nordlund advised as long as they could be kept whole. They want to maintain a number that is at least equal to \$769,000, based on the assumption of current level total compensation to the **Highway Patrol**. That is where fiscal notes become prognostication.

SEN. STAPLETON asked if \$1.5 million is more.

Ms. Nordlund said substantially more and he is correct.

SEN. RICK LAIBLE stated a driver's license is so much per year. He failed to see the reason for the drop in revenues.

Ms. Nordlund advised from 1996-1999, inflow was anywhere from between \$181,000 - \$203,000 per year. The absolute number dropped to \$124,000 and now they are paying the \$32,000 at a constant rate. The bubble is over.

SEN. LAIBLE said when the change was made to eight years, that should cycle again.

Ms. Nordlund said that would not be correct because the bubble was a one-time bubble. The number of people cycling in every year has dropped.

SEN. NELSON advised her concern was the driver's license stations. She asked how many closed during the interim.

Dean Roberts, Department of Justice, advised they had closed three or four stations since the interim. After last session, they had planned to close a goodly number of stations because they had not received the funding for those. They left most of them after visiting with the Governor's budget office and looking at their own make-up of funds. They are presently running generally the same stations they were running two years ago. They have cut back on hours and do not have as many employees at driver's license stations as a year ago. They are planning to close more rural stations depending on what happens in this legislative cycle.

SEN. NELSON asked if there are bills or are they looking at closing more because of budget constraints.

Mr. Roberts advised they have developed an internet site where a driver's license can be renewed. The only places that is available are those six counties that don't have driver's license services. The CDTP program in the high schools takes care of

about 15,000 high school kids through the driver ed programs. They still see that student once will try to maintain as many stations as they can with the budget shortfalls. He couldn't say all of the stations would stay open and suspected some of the more rural stations would close over the next biennium.

SEN. NELSON asked if he could provide a map showing where the stations are now and projecting where the closures would be.

Mr. Roberts said he would be happy to do that.

SEN. BUTCHER asked if patrolmen retire at 20 years of service.

Mr. Roberts advised they can retire without the reduction in their retirement benefit at 20 years.

SEN. BUTCHER asked if they retire at about age 45.

Mr. Roberts said he could get that information but thought it would be a little older than that. It is possible they could retire from law enforcement at 45.

SEN. BUTCHER asked if **Mr. Roberts** had a projection of how many patrolmen were going to retire in the next five years. He had some reservations on the "whole retirement thing". He asked if the \$750,000 balance will be accurate if there is a continued stream of patrolmen retiring early.

Mr. Jenkins advised the average, as of June 30, 2002, was 49 years of age. That is not directly related to the pension trust fund. People can retire earlier and that really doesn't affect the amount of money that is coming into the special revenue account and going to the pension trust fund. What is being asked in the bill is to increase the special revenue account. The amount that goes to the pension trust fund is going to remain constant regardless of the target age or the amount they get on retirement. What will affect the amount that comes out of that special revenue fund and goes to the pension trust fund is the amount of compensation being paid to highway patrolmen. As payroll goes up, a greater amount will come out of the special revenue fund. Total payroll has gone up roughly 20% over the period from 1997-2002. That is not related to the terms of the retirement, when they retire, or how much they receive. All of those things were factored into the 10.18% of payroll.

SEN. BUTCHER asked about the number of active and retired officers and how that is changing. He was concerned the 10.18% won't cover the growing pool of retired officers.

Mr. Jenkins hoped that isn't the case. If it is the case it will not be because of the growing pool of retirees as opposed to active officers. He thought it more likely to be because the investment earnings haven't met the expectations of the actuary. They assume an 8% return on investments when the **Board of Investments** does their adjustment. Roughly 60% of the pension trust fund is invested in equities. A substantial amount of money has been lost. If there is an increase to the 10.18%, it is more likely due to a shortfall in investment earnings. The growing pool of retirees and the pool of active employees has not increased commensurately and is already calculated into the actuarial analysis to a large extent.

SEN. BUTCHER asked again about the small pool of active people putting money in and a growing pool of people taking money out.

Mr. Jenkins thought it less a concern with the pension trust fund and the administration of the retirement systems because those factors are built into the actuarial analysis. He was not saying the retirement systems are in wonderful shape at this time. The reason has less to do with the population, which can be anticipated, but instead shortfall in earnings on the money, which was not anticipated. Huge increases in numbers of retirees and active employees certainly affect the actuarial analysis in ways that are unanticipated and a retirement incentive can dramatically increase retirees. Unanticipated changes have to be accounted for in the actuarial analysis.

{Tape: 3; Side: A}

SEN. JOHNSON expressed concern about increasing the license fee by 50%. If the legislature decides to raise the fee to \$6 a year, he asked if a good compromise might be to take \$1 of new money and keep the percentage the same on line 1. That would bring the figures to somewhere around \$300,000 in 2004 and \$1.3 million in 2005.

Ms. Nordlund asked if instead of a \$2 increase, would there be a \$1 increase.

SEN. JOHNSON said the increase would be \$2, but the percentage amount would not be increased 100%. The increase would be decreased to where they were before. They get 16% of \$4 and a little over a dollar on the new situation. The numbers would be around \$340,000 or \$330,000 in 2004 and about \$700,000 or \$650,000 in 2005.

Ms. Nordlund advised they would be playing closer to the vest but thought it still meets their need of making sure the inflow and outflow are commensurate.

SEN. JOHNSON referred to line four on page four. He said they want to make a report to the **Legislative Finance Committee** but there is a strike out of the current balance in the pension fund.

Ms. Nordlund said when she drafted the bill on the behalf of the department she didn't particularly understand the difference between an SSR and the highway patrol pension retirement system. She was sure the legislature wants to monitor what happens in all the PERS systems. The bill talks about the state special revenue fund only and the percentage of driver license fees. The way she wrote the bill, originally was too broad because it asked not only for them to come in compelled PERS to report. They probably do that to **State Administration**.

SEN. JOHNSON asked why they couldn't give the balance to the finance committee at the same time. He couldn't understand taking it out.

Ms. Nordlund advised the only balance to which they were trying to refer is the balance in the SSR fund. The actuarial balance would certainly be required as well.

SEN. STAPLETON asked about the general rate of return of the state special revenue fund.

Ms. Nordlund said she hadn't a clue.

SEN. STAPLETON said he took the expenditures minus the revenues and looked at the previous year's fund balance. He realized they are exactly the same. In any of these given years they are taking their revenues and expenditures and balancing out their fund balance. They are not putting another column of what is lost or made and must be adding it into expenditures.

Ms. Nordlund advised to her knowledge those are absolute dollar figures and there is no investment factor. She believed he was asking whether there is a return on the fund.

SEN. STAPLETON said fund balances are not idle. They are either gaining or losing.

CHAIRMAN ZOOK advised **Taryn Purdy, Legislative Services**, would find that out for him.

Ms. Purdy advised the issue may be whether or not that account keeps its own interest. It could be that any interest earned on that goes into the general fund.

Closing by Sponsor:

REP. YOUNKIN closed on the bill. She acknowledged there may be other math that works. She had no problem with that as long as it stays actuarially sound and the state is able to meet its obligations to the highway patrol retirement account. She did not want to go down the road of **Montana Power Company** stock and leave people that are counting on this retirement with nothing. The account is not actuarially sound right now and in a few years, if something is not done, there will be nothing left in the account. If the committee wants to overhaul the math, she advised **Ms. Purdy** work with **Mr. Jenkins** and **Ms. Nordlund**.

ADJOURNMENT

Adjournment: 10:07 A.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs47aad)